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had been made or attempted to be made upon him, and only had knowledge of what the whole transaction meant by what he was subsequently informed." See, also, note to *Sanford v. Edwards* (Montana), 61 Am. St. 492, *et seq.*

DOGS—PROPERTY THEREIN—There has been much discussion as to whether the dog constitutes property or not, and a wealth of learning and wit displayed in trying to solve the difficult problem. He has been referred to as "the negro's associate, and often his only property, the poor man's friend, and the rich man's companion, and the protector of women and children, hearth-stones and hen-roosts."

In *Strong v. Ga. Ry. & Elec. Co.*, 45 S. E. 366, it was held that a suit cannot be maintained against a railroad company for the negligent killing of a dog, the court basing its decision squarely on the ground of *stare decisis*, the same court having held the same proposition in 1885, and the legislature having failed to change the law. One of the judges concurring said:

"The trend of modern decisions seems to be in favor of treating the dog as property to the same extent that other domestic animals are treated. Speaking alone for myself, I see no good reason why the dog should not have the same status before the law as the hog, the barnyard fowl, or any other domestic animal usually found about homes and farms."

As to the status of the dog, there are three classes of cases. Some courts hold, like the Georgia court, that at common law a dog does not constitute property; others that he constitutes a base or qualified property; and still others, that he constitutes property in the ordinary sense. *Smith v. St. Paul City Ry.*, 79 Minn. 254; *Mullaly v. People*, 86 N. Y. 365. In Virginia, it was early held that at common law, the property in dogs was not such that larceny could be committed by stealing them, though the possessor had a base property in them, and might maintain a civil action for injuries done to them. *Com. v. Maclin*, 3 Leigh 809. The rule laid down in this case was adhered to solely on the ground of *stare decisis* in *Davis v. Com.*, 17 Gratt. 617. See criticism of the rule in the opinion of Joynes, J. By Acts 1904, p. 343, amending sec. 3711 of the Code, it became the law that "all dogs in the cities of Richmond, Manchester, Petersburg, and Alexandria, and in the county of Henrico, and all dogs listed for taxation in any county or city of the state, shall be deemed personal property, and may be the subject of petit larceny and malicious or unlawful trespass." And by Acts 1902-3-4, p. 312, it is provided that all dogs assessed with a state license tax, or with a municipal license tax, or with a special county tax, and upon which the assessed tax is not delinquent, *and no others*, shall be deemed personal property, and may be the subject of petit larceny and malicious or unlawful trespass.

The status of the law in Virginia, then, seems to be that, in dogs not listed for taxation or upon which the license tax is delinquent, there can be only a qualified or base property, and they are not subjects of larceny, but the owner may maintain a civil action for injuries done to them; but

dogs that are listed and upon which there are no delinquent taxes, constitute property in the ordinary sense, just as other domestic animals do.

C. B. G.

NEGOTIABLE INSTRUMENTS—PROVISION FOR PAYMENT OF ATTORNEY'S FEE—EFFECT—There is, it is believed, a widespread misconception as to the effect of the negotiable instrument law, upon a stipulation in an instrument for the payment of costs of collection or an attorney's fee, in case payment is not made at maturity. The courts of the different states are about evenly divided on the question whether negotiability is destroyed by such a stipulation. Selover on Neg. Inst. Law, p. 84. The federal courts uniformly hold that such a provision does not destroy negotiability. *Farmers' National Bank v. Sutton Mfg. Co.*, 52 Fed. 191, 17 L. R. A. 595. Previous to the enactment of the N. I. L. in Virginia, it was held that a stipulation in a note "to pay, in default of payment at maturity, ten per centum on the face of this note for attorney's fees for collection" was a penalty, and therefore was not enforceable. *Rixey v. Pearre*, 89 Va. 113, 117. From the language used by the court—"negotiable notes"—and the case cited—*Bullock v. Taylor*, 39 Mich. 137—it seems clear that the court did not hold that the provision made the notes non-negotiable, but the contrary. Therefore the N. I. L. (Pol. Sup. Sec. 2841a, p. 288), Art. 1, sec. 2, sub-sec. 5, providing that a stipulation for costs of collection or an attorney's fee in case payment shall not be made at maturity does not destroy negotiability, merely reaffirms what was probably already the law in Virginia. What is the effect upon the doctrine of *Rixey v. Pearre*, *supra*? From the fact that many blank notes are printed with a stipulation for the payment of attorney's fees in case of failure to pay at maturity, and that in many cases in the lower courts of the commonwealth, judgment has been given and execution has been issued for such penalties, it is evident that the impression prevails that the doctrine referred to has been changed by the statute aforesaid. It is submitted that such is not the effect of the statute. In equity, a promise to pay more if a stipulation be not observed, will be relieved against in this state (*Rixey v. Pearre*, *supra*; 1 Bart. Ch. Pr. 33; Sec. 3393 of the Code) and *Rixey v. Pearre* says that this doctrine applies in the case of such a stipulation in a note. The statute says that the presence of such a stipulation in a note does not destroy negotiability, which had already been decided in *Bullock v. Taylor*, 39 Mich. 137, and *Boozar v. Anderson*, 42 Ark. 167. See, also, *Chandler v. Kennedy*, 8 S. D. 56, where it is held that when a stipulation for attorney's fees is forbidden by statute, such a stipulation is surplusage, and does not destroy negotiability. Can it be said that a statute that probably reaffirmed the law in reference to the effect of such a provision on the negotiability of instruments (or, at most, changed the law on this point merely) changed *by inference* another well known principle of law? Is it not more reasonable to hold that, in jurisdictions where such a stipulation is illegal by statute or otherwise, the effect of the N. I. L. is merely to say that the presence of such a stipulation shall not destroy the negotiability of the instrument?